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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,054	07/25/2003	Joseph Manne	MAN-7	2204
7590	04/21/2004		EXAMINER	
MUSERLIAN, LUCAS AND MERCANTI 600 Third Avenue New York, NY 10016			SMITH, ARTHUR A	
			ART UNIT	PAPER NUMBER
			2851	

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicant No .	Applicant(s)
	10/627,054	MANNE, JOSEPH
	Examiner Arthur A Smith	Art Unit 2851

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) 2 and 5-8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 July 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Objections

Claim 2 is objected to because of the following informalities: Line 1 after "is" insert - - either - - so it is clear that the structures listed are being claimed in the alternate and that the nasal interface can not comprise the listed structures at the same time. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Manne (US 5949522).

In reference to claim 1, Manne discloses a scented air delivery device comprising: a conduit, ref. 14 (note: conduit referenced as ref. 14, 18 and 24 see figs. 1 and 2a), having two open ends, (at the nasal intake and the hub, ref. 26) and least one side opening in side wall of said conduit, col. 5 lines 21-30 (at the inlet valve ref. 28); one of said open ends of said conduit, adapted wearing close proximity to a nasal cavity of a user, see fig. 1; a means for creating an air flow, ref. 30, affixed to the other said open ends of said conduit, said means for creating an air flow forces air from said other of said open ends of said conduit to said one of said two open ends of said conduit and into said nasal interface; and means for injecting scent into said air flow, ref. 28 and 48, through said side opening said conduit, said injection means affixed to a side of said conduit at said side opening so as to inject scent into said air flow and create scented air in said conduit, col. 5 lines 31-54.

In reference to claim 2, Manne discloses wherein said nasal interface is a nose mask, a face mask, a tee, a wishbone or an outlet in said conduit, col. 27 line 35 – col. 28 line 15.

In reference to claim 4, Manne discloses wherein the means for injecting scent into said conduit is a plurality of scent reservoirs and said conduit has a plurality of side openings, said reservoirs affixed to the side of said conduit, one at each of said side openings, each reservoir having a means to inject scent into air in said conduit, col. 5 lines 31-33, col. 7 lines 53-60 and fig. 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Manne (US 5949522) in view of Martin (US 5898475).

In reference to claim 3, Manne does not specifically disclose wherein said means for creating an air flow in said conduit is a fan blower or a canister of compressed air. Instead Manne discloses wherein the means for creating the air flow is an actual air compressor, col. 5 lines 15-18. Martin discloses a scent delivery system in which he teaches the source of air could be either an air compressor, fan or a compressed air canister, col. 5 lines 62-65. It would have been obvious to one of ordinary skill at the time of the invention to realize that a canister of compressed air could have been substituted for an actual air compressor in the device of Manne. Since the sources of air are equivalent as demonstrated by Martin, the substitution of an air compressor for a canister would be a matter of design choice.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (US 2540144) in view of Martin (US 5610674).

In reference to claim 1, Stern discloses a scented air delivery device comprising: a conduit, ref. 33, having two open ends, (at the compressor and output) and least one side opening in side wall of said conduit, col. 2 lines 38-43; a means for creating an air flow, ref. 35, affixed to the other said open ends of said

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conduit, said means for creating an air flow forces air from said other of said open ends of said conduit to said one of said two open ends of said conduit and into a output interface, col. 3 lines 4-6; and means for injecting scent into said air flow, ref. 31, 36 and 37, through said side opening said conduit, said injection means affixed to a side of said conduit at said side opening so as to inject scent into said air flow and create scented air in said conduit and wherein the means for injecting scent is a plurality of scent reservoirs and said conduit has a plurality of side openings, said reservoirs affixed to the side of said conduit, one at each of said side openings, each reservoir having a means to inject scent into air in said conduit, col. 3 lines 11-35 and fig. 2. Stern does not disclose wherein one of said open ends of said conduit is adapted for wearing in close proximity to a nasal cavity of a user. Instead, Stern discloses that his system is used for an auditorium. Martin discloses a scent delivery system with an open end is adapted for wearing in close proximity to a nasal cavity of a user, see abstract and col. 3 lines 1-35. Martin also discloses where the source of air is either an air compressor or compressed canister of air, col. 4 lines 18-20. It would have been obvious to one of ordinary skill at the time the invention was made to realize that the scent delivery system of Stern could be miniaturized to allow for scent delivery to the nose of a particular user. This would be done per the teachings of Martin, to provide portability and increase market acceptance, see col. 1 lines 1-31.

Allowable Subject Matter

Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: In reference to claim 5, the prior art of record fails to teach or anticipate the claimed limitation of wherein the means for injecting scent into said conduit comprises: a frame affixed to said conduit at said side opening; a rotatable wheel affixed to said frame, said wheel having an axis of rotation parallel to an axis of said conduit; one or more scent containers affixed to said wheel, each of said containers having an outer elongated sleeve affixed to said wheel, one end of said outer sleeve being open and adjacent to a rim of said wheel, another end of said outer sleeve facing said axis of said wheel, a scent reservoir having an outlet, an inner sleeve concentric with, positioned in, and movable in said outer sleeve, one end of said inner sleeve being closed and facing said rim of said wheel, another end of said inner sleeve extending into said reservoir through said outlet of said reservoir and affixed to said reservoir at said outlet, at least one window in a side wall of said inner sleeve, said window positioned adjacent said one end of said inner sleeve, a wick positioned in said inner sleeve and extending from said scent reservoir to said window, means for moving said inner sleeve and said reservoir to open and close said window such that, when said window is opened, said inner sleeve is in said conduit and said window allows scent from said wick to enter said air flow in said conduit and when said window is closed said inner sleeve is outside said

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conduit and said window is against an inside wall of said outer sleeve so as to prevent scent from entering said air flow; and a motor for rotating said wheel to align each said of said inner sleeve of said scent containers with said side opening to allow scent from said scent reservoir to be delivered an air flow in said conduit.

Claims 6-8 are allowed based on their dependency to claim 5.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur A Smith whose telephone number is (571) 272 2129. The examiner can normally be reached on Monday - Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays during the same hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams can be reached on 571-272-2112. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur A. Smith
April 17, 2004